

## **REMARKS**

### **Claim Amendments, Objections and Rejections under 35 USC §§ 112, second paragraph**

Claims 15 and 16 are amended to recite specific adhesives taught in the specification on page 5, lines 5-6 from the bottom of the page.

Claims 40, 41, 43, and 44 are cancelled to further the prosecution of the application. Applicants nevertheless make the following comments as they disagree with the rejection of these claims.

The office action alleges that the feature of claims 40 and 41, requiring that the radioisotopes be bound in a non-covalent manner is new matter. Applicants respectfully disagree. The specification at numerous place teaches the bonding of the radioisotopes through a complexing agent. Several of the claims also recite a complexing agent. Complexing agents by definition do not bind by covalent bonding, but rather by encaging the radioisotope.

The office action alleges that the feature of claims 43 and 44, requiring that the radioisotopes not be P32 is new matter. Applicants respectfully disagree. Example 13 specifically teaches coating of a stent with P32. Under *In re Johnson*, 558 F.2d 1008, 1019, 194 USPQ 187, 196 (CCPA 1977), also discussed in MPEP § 2173.05(i), elements positively recited in the specification may be explicitly excluded in the claims whether or not the specification also recites their absence. .

All withdrawn claims are also cancelled without prejudice or disclaimer. Applicants expressly reserve the right to pursue subject matter not allowed in this application in a possible related application.

### **The Rejections Under 35 USC §§ 103**

The section 103 rejection of claim 15 over Fischell et al. has been withdrawn, but the rejection is said to be reinstated after the amendment of the claims when the non-radioactive and non-pharmacophor adhesive limitations are removed.

Applicants submit that the amended form of claim 15 is not obvious over Fischell.

Fischell et al. teaches a stent that has a single coating that has both antithrombogenic and radioactive properties, see column 1, lines, 29-31, lines 43-44, and lines 61-63, and a stent having two layers, an inner layer which is both antithrombogenic and radioactive, and an outer

layer which is only antithrombogenic, see column 1, lines 32-41, lines 45-47, and column 2, lines 1-3. None of these embodiments described by Fischell et al. render obvious a process for preparing a stent that is coated by an adhesive that is a peptide, a fat or gold, said gold used in combination with a thiol-group-containing complexing agent, followed by coating the stent with the radiolabeled adhesive.

Reconsideration is respectfully requested.

Claims 16, 32, 41, and 44 are rejected under section 103 as allegedly unpatentable over Armini et al.

Applicants submit that the amended claims are not obvious over Fischell. None of the embodiments described by Fischell et al. render obvious a process for preparing a stent that is coated by an adhesive that is a peptide, a fat or gold, said gold used in combination with a thiol-group-containing complexing agent.

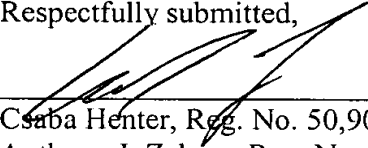
Armini does not teach a stent having a peptide or a fat coating. Armini does teach a stent that has a gold coating, but does not teach that said gold is used in combination with a thiol-group-containing complexing agent. See column 5, lines 9-28. Neither the word “thiol” nor “complexing” are mentioned in the reference. Thus, the claims are not unpatentable over Armini.

Applicants further note that Armini et al. has a US priority of July 7, 1997, while all the priority documents of the present application are dated April 30, 1997, or June 3, 1997, i.e., predate the reference. Verified translations of the priority documents are attached. At least German Application 197 18 340.9, filed on April 30, 1997 and German Application 197 24 230.8, filed on June 3, 1997, each individually, provide full support for the claimed subject matter.

Reconsideration is respectfully requested.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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Csaba Henter, Reg. No. 50,908  
Anthony J. Zelano, Reg. No. 27,969  
Attorneys/Agents for Applicant(s)

MILLEN, WHITE, ZELANO  
& BRANIGAN, P.C.  
Arlington Courthouse Plaza 1, Suite 1400  
2200 Clarendon Boulevard  
Arlington, Virginia 22201  
Telephone: (703) 243-6333  
Facsimile: (703) 243-6410  
Attorney Docket No.: SCH-1718-C1

Date: August 12, 2003  
AJZ/CH(pdr):K:\Sch\1718C1\Reply Aug 2003.doc